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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)
) Case No. 01-01139 (JKF)
W.R. Grace & Co., et al.,) Chapter 11
) Hearing: May 23, 2011 @ 9:00 a.m.
Debtors.)

**RESPONSE OF ILLINOIS DEPARTMENT OF REVENUE TO DEBTOR'S OBJECTION
TO CLAIM No. 150**

The Illinois Department of Revenue ("IDOR"), by its attorney, Lisa Madigan, Illinois Attorney General, responds to Debtor's objection to Claim No. 150 as follows:

1. IDOR filed a withholding tax claim for various quarters in 1976 and 1984 through 1989. The claim was filed because, according to IDOR's records, W.R. Grace ("Debtor") failed to file withholding tax returns or remit the related taxes during 1976 and, after doing so during the intervening years, again failed to file withholding tax returns or remit the taxes during the period from 1984 through 1989.

2. Based on the Debtor's failure to file returns and pay the related taxes, IDOR estimated liability for these "open" quarters by projecting liability from other tax periods for which returns were filed and, based on this projected liability, filed claim No. 150.

3. In its objection, the Debtor asserts that the liability claimed in Claim 150 is unenforceable as IDOR failed to issue Notices of Deficiency (NODs) for these quarters within the statute of limitations of 35 ILCS 5/905(j).

4. While IDOR acknowledges that it did not issue NODs, the Debtor misconstrues the effect and application of the statute of limitations set forth in 35 ILCS 5/905(j). Section 905(j) applies to establish a statute of limitations in those situations where the taxpayer filed returns. See *Mitchell v. Department of Revenue*, 596 N.E.2d 31, 32 (Ill. App. 1992). Where a taxpayer fails to file returns, there is no statute of limitations. *Id.*, see also 35 ILCS 5/905(c). Therefore, IDOR's claim cannot be disallowed on this basis.

5. Unless the Debtor files returns for the "open" quarters or can demonstrate that it did not have Illinois employees during these quarters and therefore had no liability, the Court should allow IDOR's claim as filed.

WHEREFORE, IDOR requests that the Court enter an order (1) denying the Debtor's objection and, unless the Debtor files returns or demonstrates that it did not have Illinois employees during the applicable quarters, (2) allowing IDOR's claim in the amount as filed.

ILLINOIS DEPARTMENT OF REVENUE
BY: LISA MADIGAN
Illinois Attorney General

BY: /s/ James D. Newbold
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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he served a copy of this **RESPONSE** on:

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/s/ James D. Newbold
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